



Montoya, Darlene <dmontoya@nmag.gov>

RE: Request for Policies & Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

3 messages

Montoya, Darlene <dmontoya@nmag.gov>
To: magmarshal@gilanet.com

Mon, Dec 19, 2016 at 2:41 PM

Marshal:

Attached please find correspondence from the Law Enforcement Board Subcommittee regarding the above-referenced matter.

If you have any questions or concerns, please do not hesitate to contact me. Thank you

—
Darlene Montoya, Administrator
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501
[\(505\) 490-4854](tel:(505)490-4854)

 **Scanned from a Xerox Multifunction Printer.pdf**
84K

MAGDALENA VILLAGE MARSHALL DSL <magmarshal@gilanet.com>
To: "Montoya, Darlene" <dmontoya@nmag.gov>

Mon, Dec 19, 2016 at 4:10 PM

Ms. Darlene Montoya,
Please see attached Use Of Force Policies for the Magdalena Marshal's Office.
If you have any questions please contact me.

Larry Cearley
Magdalena Marshal
Po box 145
108 North Main Street
Magdalena, New Mexico 87825
[505-239-5181](tel:505-239-5181) Cell
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[Quoted text hidden]

2 attachments

 **MMO SOP 2-06.doc**
68K

 **MMO SOP 2-07.doc**
37K

Montoya, Darlene <dmontoya@nmag.gov>
To: MAGDALENA VILLAGE MARSHALL DSL <magmarshal@gilanet.com>

Tue, Dec 20, 2016 at 10:10 AM

Marshal Cearly:

Thank you so much for your quick response. I hope you and your office have a very Merry Christmas, and a wonderful and safe New Year.

[Quoted text hidden]

MAGDALENA MARSHAL'S OFFICE		GENERAL ORDERS
SUBJECT: USE OF FORCE	NUMBER: 2-06	
EFFECTIVE DATE: 7- 1-2011	REVIEW DATE:	
AMENDS/SUPERSEDES	APPROVED:	
	<hr/> MARSHAL LARRY LEARLEY	

NOTE

This rule or regulation is for internal use only, and does not enlarge a police officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by the Magdalena Marshal's Office, and then only in a non-judicial administrative setting.

INDEX WORDS

Choke holds	Force (cont'd)
Firearms	Vehicles (firing at/from)
Qualification	Oleoresin capsicum (OC)/Pepper spray
Force	Air taser
Deadly	Expandable baton
Excessive	Shotguns
Non-deadly	Tear gas
Prohibited acts	Weapons
Reporting use of	Off-duty
Use of (general)	On-duty

I. POLICY

Police officers are confronted daily with situations requiring the use of force to affect an arrest or ensure public safety. The degree of force used depends on what the police officer perceives as reasonable and necessary under the circumstances at the time he/she decides to use force. Except for deadly force, the application of any degree of force is justified only when the police officer reasonably believes that it is necessary:

- A. To prevent the escape from custody, make an arrest or an investigative detention of a person the police officer believes has committed a crime; or

- B. To defend him/herself or another from what the police officer believes is the use of force while trying to arrest another, prevent the arrestee's escape, or otherwise lawfully take the arrestee into custody.

Facts or circumstances unknown to the police officer shall not be considered in later determining whether the force was justified. The Magdalena Marshal's Office expects police officers to observe the following two guidelines in all applications of force:

- A. Employ the minimum force reasonably necessary to accomplish a legal purpose.
- B. Police officers may resort to more severe methods of force to overcome either increasing resistance or an increasingly dangerous threat to public safety.

The escalation in the use of force typically follows a pattern: verbal control, compliance techniques (control holds), defensive tactics (e.g., baton), and finally, deadly force. Police officers must understand how to recognize increasing or decreasing levels of threat and respond appropriately.

When applying deadly force the police officer's objective shall be to stop or incapacitate the suspect, not to kill, unless no other choice presents itself. The objective of the use of any force is to overcome the suspect's resistance to a police officer's lawful purpose: police officers shall avoid unnecessary or excessive applications of force.

Police officers shall not unreasonably or unnecessarily endanger themselves or the public when applying this policy.

II. PURPOSE

The purpose of this policy is to establish guidelines governing the use of force and its limitations, and to describe prohibited activities.

III. DEFINITIONS

- A. Deadly force:

- 1. The firing of a firearm, even though no intent exists to kill or inflict bodily harm.

2. Any force applied in any manner by any means that could reasonably be expected to cause death or great bodily harm.

a. "Great bodily harm" means bodily injury which creates a substantial risk of death or which is likely to cause serious permanent disfigurement or loss, or extended impairment of the function of any body member or organ.

B. Non-deadly force:

Force employed which is neither likely to, nor intended to, cause death or serious physical injury.

C. Firearms:

Any weapon from which a projectile is forcibly ejected by an explosive.

D. Reasonable belief:

When facts or circumstances the police officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

E. Serious physical injury:

A physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement or impairment of the function of any bodily organ or limb.

F. Excessive force:

Force is excessive when its application is inappropriate to the circumstances, resulting in serious physical injury or death to a suspect. In determining whether force has been excessively applied the primary concern is whether the on-scene police officer reasonably believes that its application was necessary and appropriate. Based on the reasonableness standard, excessive force may be determined based on:

1. The severity of the crime;
2. The nature and extent of the threat posed by the suspect;
3. The degree to which the suspect resists arrest or

detention; and

4. Any attempts by the suspect to evade arrest by flight.

In evaluating the reasonable application of force, police officers must consider their own age, size, strength, skill level with Magdalena Marshal's Office weapons, state of health, and the number of police officers opposing the number of suspects.

IV. PROCEDURES - Non-deadly force

The Magdalena Marshal's Office trains police officer in the use-of-force continuum which emphasizes the recognition of, and response to, increasing levels of threat. Most instances in which force is applied are non-deadly. Police officers shall assess the incident to determine which technique will best bring the situation under control. Following the application of any method of force, once the situation is contained, police officers shall provide or arrange to provide medical help. The following discussion reinforces key principles from training.

A. Verbal control:

Verbal control refers to the manner in which the police officer speaks to a person which alone can manage a situation. Verbal control includes advice, persuasion, admonitions, or orders. The volume and tone of the police officer's speech may also contribute to control without having to resort to another method of force. The Magdalena Marshal's Office urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.

B. Compliance techniques:

At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, take-downs, control holds, or come-alongs with sufficient force to make the lawful arrest without aggravating a suspect's combativeness. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to police officers, bystanders, or the person being placed in custody. Where lesser levels of force appear ineffective, police officers may employ hands, fists, feet, and knees, and so on in striking an adversary, according to methods sanctioned through training.

C. Chemical agents:

The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser levels are inappropriate or ineffective. The only chemical weapon authorized for patrol personnel is the oleoresin capsicum (OC) or "pepper spray." Chemical agents shall be used only to the extent necessary to overcome the resistance of the suspect within training standards. Specialized weapons (chemical or otherwise) shall be used only by personnel trained in their application, and then only under direct orders of the Marshal.

1. Chemical sprays shall not be used to threaten to elicit information or persuade people to comply with orders nor will they be used on people who are handcuffed, secured, and properly in custody.
2. Keep the application to the absolute minimum required to effectively control the subject.
3. Do not use on persons who are sick, intoxicated or who are not in possession of their normal protective reflexes (such as being able to turn away from the applied spray). NOTE: Applying a chemical agent to such persons can result in injury out of proportion to the threat they may present.
4. If the Marshal authorizes the use of specialized weapons, observe the following:
 - a. Chemicals are used primarily in dealing with unruly crowds and armed barricaded subjects.
 - b. Gas grenades are used to disperse unruly crowds and induce the surrender of barricaded subjects when negotiations have failed.
 - c. A Tear gas gun is used to fire projectiles into the area of an armed, barricaded suspect when the use of hand-tossed grenades is unsafe or impractical.

D. DEFENSIVE TACTICS:

The Magdalena Marshal's Office authorizes the carrying and use of the asp as the only striking weapon for police officers: all other forms of striking or punching weapons are prohibited for carrying or use including, but not limited to, saps, blackjacks,

slapjacks, nunchaku and similar sticks, and brass knuckles. Police officers who carry the asp shall be certified in its use. The weapon may be used in quelling confrontations involving physical violence where higher levels of force are unnecessary or inappropriate and lesser levels are inappropriate or ineffective.

1. The expandable baton shall not be used to strike handcuffed individuals or to threaten or intimidate people.
2. The expandable baton is mainly useful as an instrument to manage various control holds, not as a club or prod. Police officers shall not raise the asp above the head to strike a blow.

E. Air Taser: See 2-6A

V. DEADLY FORCE

A. Firearms - general:

1. Firearms may be used:
 - a. In defense of the police officer or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or
 - b. To prevent the escape of a fleeing felon whom the police officer has probable cause to believe will pose a significant threat to human life should escape occur. No other reasonable means of capture must be available to the police officer in this case without endangering the police officer's life or the life of another person.
 - (1) In evaluating a "significant threat," the police officer must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the police officer or others if apprehension is delayed.
 - (2) Where feasible, police officers shall identify themselves and give a warning before shooting.
 - d. To kill seriously injured or dangerous

animals when no other disposition is reasonably practical. The Marshal's approval should be sought when possible.

- e. In routine firearm training or practice at an approved range.
2. Before using a firearm, police officers shall identify themselves and state their intent to shoot, where feasible.

B. Shotgun:

1. Due to its wide shot dispersion, the shotgun shall only be used when a possibility exists that the police officer will be dealing with an armed suspect, e.g., armed robbery in progress, searching for armed suspects, answering calls when the complainant has indicated that a person is armed.
2. The Marshal may approve the use of shotguns on raids and stakeouts when he/she believes that a threat to human life exists.
3. Shotguns shall be secured and carried in patrol units when not in preparation for use. When the shotgun is not secured, it shall be carried with the safety on at all times until there is an immediate need to fire the weapon.
4. Shotguns shall be removed from vehicles before leaving them at any garage or service station.
5. Before beginning a tour of duty or immediately thereafter police officers shall inspect the shotgun assigned to them.
6. During regular firearms qualification, each police officer shall be required to demonstrate proficiency with it.
7. The Marshal shall develop a shotgun maintenance schedule. The police officer shall clean the shotgun then the Marshal will inspect shotguns according to schedule.
8. The general rules for the use of firearms above apply to shotguns.

C. Patrol rifle AR-15

1. Commissioned Magdalena Marshal's Office personnel are authorized to carry rifles issued by the Magdalena Marshal's Office after successfully completing training and qualification requirements established by the Magdalena Marshal's Office. During their tour of duty, police officers will secure their rifle either in the trunk of the police vehicle or in an approved locking rack within the passenger compartment until deployment. Deployment occurs when the rifle is removed from the vehicle for a police response. While off-duty, personnel will secure their rifle appropriately (i.e. locked in a gun safe, locked in the trunk of their police vehicle, locked in an approved locking rack, or disassembled).
2. Only approved rifles (AR-15 and authorized variants) are allowed for duty carry. No modifications will be made to any rifle carried on duty. Only a trained armorer may perform work on any rifle beyond that of cleaning, maintenance, and sight manipulation.
3. Only Magdalena Marshal's Office issued duty ammunition will be carried on duty.
4. While carried in a police vehicle, rifles will have rounds in the magazine only. Once the rifle is deployed the chamber will be charged and the rifle made ready.
5. After successfully completing initial Magdalena Marshal's Office training and qualification requirements for the patrol rifle, personnel must continue to qualify on a periodic basis as required by the NMLEA. A minimum qualification score is 90%. Personnel failing to qualify will be allowed a second attempt to qualify with the rifle. If the police officer fails to qualify on the second attempt remedial training will be provided by the Marshal. Personnel who fail to qualify during remedial training will no longer be authorized to carry a rifle on duty.

VI. LIMITATIONS ON FORCE

The following acts associated with the use of force are prohibited.

- A. Firing into crowds.
- B. Firing a warning shot.
- C. Firing at or from a moving vehicle, except where the police officer reasonably believes that
 - 1. an occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; or
 - 2. a vehicle is operated in a manner deliberately intended to strike an police officer or a citizen and all other reasonable means of defense have been exhausted (or are not present), including moving out of the path of the vehicle, and the safety of innocent persons would not be unduly jeopardized by the police officer's action.
 - 3. Police officers shall not fire at or in the direction of a vehicle that no longer poses an immediate threat.
- D. Firing into a building or through doors when the person fired at is not clearly visible unless police officers are being fired upon from such building or through such door.
- E. Firing at a suspect when lesser force could be used and the police officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force, or when there is any substantial danger to innocent bystanders. (*When in doubt, don't shoot.*)
- F. Application of choke hold or carotid control holds, except when the police officer reasonably believes such holds are the only means of protecting him/her or another person from an imminent threat of serious physical injury or death.
- G. Use of Streamlites or Kel-lites or other flashlights as batons. A police officer may use a flashlight or other object designed for a use other than as a weapon only to defend him/herself or another from imminent serious physical injury or death and then only if Magdalena Marshal's Office sanctioned methods are not available or are impractical. The use of a flashlight under such circumstances shall be deemed an application of deadly force.
- H. Carrying or use of a second back-up firearm.

- I. The carrying or use of saps, blackjacks, slapjacks.
- J. Use of deadly force against unarmed, non-dangerous fleeing felons, fleeing misdemeanants, or traffic offenders.
- K. Any uses of force not reasonably necessary in the light of the circumstances confronting the police officer.
- L. Any forcible enforcement action when off duty except in circumstances which seriously threatens life, valuable property, or public order.

VII. WEAPONS

- A. Duty weapon: While on duty, a police officer shall carry an approved weapon: a .357sig or a 45mm. The Magdalena Marshal's Office shall issue ammunition for the weapon.
 - 1. Weapons shall be inspected and approved by the Marshal. In addition, the weapon shall fire Magdalena Marshal's Office-issued ammunition and the police officer shall qualify with the weapon as well as with Magdalena Marshal's Office-issued shotgun. Police officers shall buy ammunition for their personally owned off-duty weapons.
 - 2. The Marshal shall maintain a record of all weapons used by police officers on duty. The record lists weapon descriptions, ammunition type issued, date of issue, and information pertaining to qualifications. Police officers shall annually review the records to ensure that they are up to date.
- B. Off-duty weapons: A police officer who elects not to carry a handgun while off duty shall not be subject to disciplinary action if an occasion should arise in which he/she could have taken police action if he/she were armed.
 - 1. (Exception) Off-duty police officers shall be armed with their Magdalena Marshal's Office issued weapon while operating a Magdalena Marshal's Office vehicle.
 - 2. Police officers who carry off-duty weapons must understand that in some social situations (e.g., sports) the carrying of a firearm is inappropriate.

3. Police officers who have consumed alcoholic beverages shall not carry an off-duty weapon under any circumstances.
4. All police officers shall submit off-duty weapons to the firearms instructor for inspection and firing before carrying them.
5. Off-duty Police officer who carry firearms while in plain clothes shall not wear them in any way that allows the public to see them.

C. Qualification:

No Police officer shall carry or use any firearm, chemical agent, baton or Taser unless he/she has received training and demonstrated proficiency in its use.

1. Police officers who fail to pass the qualification shall be relieved of their police powers and immediately reassigned to non-enforcement duties.
2. Police officers who have taken extensive leave or suffered an illness or injury that could affect the use of firearms shall requalify before returning to enforcement duties.
3. Annual firearms qualification will follow required state standards for daylight and night shooting. Further firearms training may be required per State statute or the Marshal.

VIII. REPORTING USE OF FORCE

- A. Police officers shall document any application of force except for those arising in training or Magdalena Marshal's Office demonstrations.
- B. If police officers have employed chemical weapons or any higher degree of force, they shall:
 1. Immediately notify the Marshal of any use of physical force.
 2. Submit a memorandum to the Marshal within 24 hours describing the incident and any medical aid rendered, and shall substantiate the force used. The memorandum shall be in addition to any other reports.
- C. Depending on the seriousness of any injury resulting

from the application of force, whether to a citizen or police officer, the Marshal shall notify the city clerk and, in case of death, the district attorney and the medical examiner.

IX. MAGDALENA MARSHAL'S OFFICE RESPONSE

A. Assignment:

Pending administrative review, any police officer who has taken the life of another person shall be removed from line-duty assignment for a minimum of three days. This action protects both the police officer's and the community's interest until the situation is resolved. The police officer will complete a psychological review before being returned to line-duty.

B. Review:

1. The Marshal shall review all reported uses of force to determine whether:
 - a. Magdalena Marshal's Office orders were violated;
 - b. Relevant Magdalena Marshal's Office policy was clearly understandable and effective to cover the situation; and
 - c. Magdalena Marshal's Office training was adequate.

C. Internal investigations:

Internal investigations of serious applications of force (usually of compliance techniques and more severe methods) shall be of two types conducted simultaneously: first, an administrative investigation to determine whether Magdalena Marshal's Office standards were followed; second, a criminal one to detect lawbreaking. A criminal investigation shall be discontinued whenever the Magdalena Marshal's Office is satisfied that no misconduct occurred. RR 1-9 details the two types of investigations.

1. Dual internal investigations shall be conducted on all shootings.

D. Psychological services:

Psychological follow-up of post-shooting trauma will normally be directed by the Marshal or his/her designee

whenever deemed appropriate. During an internal investigation, the Magdalena Marshal's Office shall do all within its power to avoid placement of a stigma on the police officer who shoots in performance of duty. Following a shooting resulting in a death, the police officer shall not return to duty until a psychological evaluation has been conducted, and the police officer has received counseling.

MAGDALENA MARSHAL'S OFFICE		GENERAL ORDERS		
SUBJECT: USE OF HANDCUFFS AND RESTRAINTS	NUMBER: 2-07			
EFFECTIVE DATE: 7-1-2011	REVIEW DATE:			
AMENDS/SUPERSEDES:	APPROVED:			
MARSHAL LARRY CEARLEY				

NOTE

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INDEX WORDS

Handcuffs
 Investigative detention
 Positional asphyxia
 Restraints

I. POLICY

The police officer's responsibility for the safe custody of his/her prisoner permits some discretion in the use of handcuffs and restraining devices. See also GO 2-8, Transporting Prisoners. The Magdalena Marshal's Office requires police officers to exercise safety awareness by carefully restraining most prisoners who must be transported to a jail or other location.

II. PURPOSE

The purpose of this policy is to establish guidelines for the use of handcuffs and restraining devices.

III. PROCEDURES - Arrested Persons

A. General:

1. Police officers shall handcuff or restrain arrested persons unless it is physically or medically unreasonable. Any police officer, when transporting a prisoner of the opposite sex will give both beginning and ending mileage.

2. The nature of the restraint chosen to subdue a suspect and the related method of transporting a suspect to jail or to court depends on the level of threat against the police officer. A minimal threat may require restraint through handcuffing, plastic handcuffs, or wearing seat belts. A threat of property damage or injury posed by the suspect may require restraint through a body belt, leg or ankle restraints, or a vehicle cage. The most severe threat may involve a full-body wrap or a straight jacket and perhaps a vehicle equipped with specialized restraints.

A. Handcuffs:

1. Police officers shall handcuff a person with the hands in back, palms facing outward, but may choose to handcuff hands in front if the prisoner:
 - a. is obviously pregnant; or
 - b. has a physical handicap; or
 - c. has injuries that may be aggravated by standard handcuffing procedures.
2. Police officers shall not handcuff a person to the transport vehicle or any part of it or to any other fixed object such as a door or pipe.
3. Police officers shall double-lock handcuffs to help ensure prisoner and police officer safety. Double locking reduces the chance of picking the lock or of the bracelet accidentally closing, further restricting circulation.

B. Body belt:

The body belt allows the police officer to handcuff the prisoner in front yet restricts the movement of the prisoner's arms and hands. Normally, this device will be used when transporting prisoner's considerable distances.

C. Ankle shackles:

Ankle shackles shall be used by police officers when transporting any prisoner they have reason to believe might be an escape risk.

D. Plastic handcuffs:

Plastic handcuffs shall be used when police officers take into custody several prisoners or when a prisoner requires multiple restraints. Police officers must understand that plastic handcuffs, once applied, can only be removed with a knife or pair of shears.

IV. PROCEDURES - Persons not arrested

- A. If police officers have a reasonable suspicion that a suspect has been involved with a violent offense, then handcuffs may be applied while police officers investigate the possibility that criminal conduct occurred. See GO 2-3, field interviews, for further discussion of the legal aspects of investigative detention.
- B. Persons not arrested, but who are subject to investigative detention may be restrained under the following circumstances.
 1. Suspects shall be handcuffed only as long as necessary to accomplish the investigative goal.
 2. Handcuff-ing of suspects shall be accomplished with minimal discomfort to the suspect.
 3. Police officers shall limit the number and type of restraints used on the suspect to what is reasonably necessary to accomplish the investigation.

V. SPECIAL CIRCUMSTANCES

A. Positional asphyxia:

Police officers shall not hog-tie suspects by placing them in a prone position with the hands and ankles bound from behind with handcuffs, belts, or other devices. As soon as any suspect who is lying on his/her stomach has been handcuffed police officers shall roll the suspect onto his/her side or place the suspect in a sitting position.

1. Positional asphyxia occurs when the position of the body interferes with respiration. A prone, hog-tied suspect may suffocate. Intoxication, presence of a head injury, obesity, and physical disability are all circumstances that can increase the possibility of suffocation.

2. Ascertain if the suspect has used alcohol or drugs recently or suffers from any cardiac or respiratory problem. Monitor the suspect and obtain medical treatment if necessary.